

REMARKS

Applicants expressly reserve the right to prosecute the non-elected subject matter in a divisional application should it prove necessary to do so.

With respect to claims 15-18, Applicants note the rejoinder provisions spelled out in the Office Action. Applicants presume that claims 15-18 will be rejoined and examined in the event that claims 1-14 are found to be allowable.

With respect to the traversal, Applicants believe that the search and examination of Groups I-V can be made without subjecting the Examiner to serious search burden. Indeed, if the search for Group I is made first and prior art is not found that renders the subject matter of Group I anticipated or *prima facie* obvious, then the subject matter of Groups II-V must also be novel and unobvious—by definition. *See, for example, In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); and *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996). Applicants believe, therefore, that a search of Groups I and II-V, when strategically performed, should not occasion a serious burden on the Examiner. On the other hand, Applicants will be put to significant expense if they must prosecute Groups II-V in one or more separate divisional applications. Therefore, Applicants respectfully request that the Examiner examine Groups I-V together.

Manual of Patent Examining Procedure § 803 is entitled “Restriction — When Proper” and provides in pertinent part:

“If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

* * *

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The inventions must be independent * * * or distinct as claimed * * *; and
- (2) There *must* be a serious burden on the examiner if restriction is *not* required * * *. [All emphasis added.]”

Consequently, the Examiner's authority to insist upon restriction only extends to those situations where the failure to insist upon restriction would subject the Examiner to serious burden.

As noted above, it should be possible for the Examiner to search Groups I-V without serious burden. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement so that Groups I-V are examined together here.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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